

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN SHPEEN and STEVEN G. BALAN,
Trustees of the SARALYN S. BALAN
REVOCABLE TRUST,

UNPUBLISHED
January 25, 2007

Plaintiffs/Counter-Defendants-
Appellants,

v

No. 271519
Oakland Circuit Court
LC No. 2006-071872-CH

ANNE PERNICK,

Defendant/Counter-Plaintiff/Third-
Party Plaintiff-Appellee,

and

GTL INVESTMENTS, INC., d/b/a JOHN ADAMS
MORTGAGE COMPANY,

Defendant-Appellee,

and

DEVON TITLE COMPANY and
COMMONWEALTH LAND TITLE INSURANCE
COMPANY,

Defendants,

and

JUDY BALAN and ESTATE OF JERRY N.
BALAN,

Third-Party Defendants.

Before: Meter, P.J. and O'Connell and Davis, JJ.

PER CURIAM.

In this action to quiet title, plaintiffs appeal as of right from the circuit court's judgment denying their motion for summary disposition, granting summary disposition to defendants-appellees Anne Pernick and GTL Investments, and declaring that the real property in dispute is vested in Pernick, subject only to the mortgage interest held by GTL.¹ We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

On August 3, 1995, plaintiffs' mother executed the Saralyn S. Balan Revocable Living Trust, naming her husband, Jerry Balan, as successor trustee to herself. On the same date, plaintiffs' mother and Jerry Balan conveyed the subject property by quitclaim deed to the Trust. That conveyance was recorded several days later. Plaintiffs' mother died in 1997, leaving Jerry Balan as acting trustee. Jerry Balan married third-party defendant Judy Balan in 1998.

In 2002, Jerry and Judy Balan purported to convey the subject property by warranty deed to Pernick. The Balans executed an affidavit attesting that they were the lawful owners of the property, that no other persons had any interest in it, and that they "are not holding title for another in fulfillment of any trust or agreement" Devon Title Company handled the closing, but did not discover the Trust's earlier recorded deed. The proceeds from the sale were never put into the Trust. Plaintiffs assert that Jerry Balan instead spent those funds on himself with great abandon. Jerry Balan died in 2005.

Plaintiffs, as successor trustees, filed suit to quiet title in the subject property in favor of the Trust, and Pernick counterclaimed. On cross motions for summary disposition, the trial court held that, because Jerry Balan had no power to convey the property except in his capacity as a trustee, his action in doing so established that he was acting on behalf of the Trust. The court additionally opined that the latter's failure to deposit the proceeds from the sale into the Trust might give rise to a claim of breach of fiduciary duty against Jerry Balan's estate, and possibly also against Judy Balan and Devon Title Company, but that the equities militated in favor of judgment in favor of Pernick. We review de novo a trial court's decision on a motion for summary disposition. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999).

Plaintiffs argue that the trial court erred in quieting title in Pernick on the ground that she, although herself innocent in the matter, took from Jerry and Judy Balan acting in their individual capacities, so they had no authority to dispose of the property. Plaintiffs point out that the Trust held a recorded deed to the property and argue that, although Jerry Balan was an acting trustee, his failure to indicate that he was serving in that capacity demonstrates that he was acting as an individual who had no authority to convey the property. Plaintiffs also point to his retention and disposition of the sale proceeds and the participation of Judy Balan, who had no trustee responsibilities. They argue that these facts further indicate that this was a fraudulent conveyance by two individuals, not an exercise of Jerry Balan's prerogatives as trustee. We disagree.

¹ The order also dismissed the third-party claims of Pernick against Judy Balan and the Estate of Jerry N. Balan. The court earlier dismissed by stipulation defendants Devon Title Company and Commonwealth Land Title Insurance Company. Those dismissals are not at issue in this appeal.

The Trust granted Jerry Balan, as trustee, such wide discretion to dispose of Trust property that the distinction between Jerry Balan the individual and Jerry Balan the trustee practically evaporates. The terms of the Trust granted its trustee “full discretionary power and authority to deal with any real property or interest therein, including, but not limited to, the power to . . . sell, . . . give, abandon or otherwise dispose of or acquire real property . . . without reference to the term of any Trust created hereunder . . . ” and further authorized the trustee “to receive proceeds” from any real estate transaction. Accordingly, despite Balan’s failure to label himself a trustee for purposes of the conveyance, the powers he exercised were among those clearly authorized by the Trust, and the Trust’s deed was subject to Balan’s power of alienation.

The Trust also states, “No person dealing with the Trustee . . . in connection with a real estate transaction shall be put to the inquiry of the authority of the Trustee . . . , regardless of any actual knowledge of any provision of this Trust, or any fact, which may be inconsistent with this Section, nor shall any person be responsible for the application of the funds, if any, paid to the Trustee” Therefore, the Trust insulates Pernick from liability for any failure to inquire into Balan’s authority to sell, or over what he did with the proceeds. It also indicates Saralyn Balan’s intention to authorize a trustee to sell any real estate in the trust without the need to disclose fully the nature of the trustee’s relationship to the property. Judy Balan’s arguably gratuitous participation in the transaction did not itself deprive Jerry Balan of his trustee status or attendant prerogatives.

Like the trial court, we are persuaded by some North Carolina cases holding that a trustee’s conveyance of trust property is valid despite the lack of mention of trustee status on the instrument of conveyance. The law refrains from examining the secret thought process of the trustee, but looks to the manifested acts to determine the trustee’s intent. If an individual executes a document that would, if backed by authority, convey title to property, and the individual lacks authority to convey title except in an official capacity, then the document itself expresses the individual’s intent to execute the document in the authorized capacity. See *Tocci v Nowfall*, 220 NC 550; 18 SE2d 225, 228 (1942).

A deed executed by the trustee to convey property held in trust will operate as an exercise of the trustee’s power of disposition notwithstanding the failure on its face to indicate that it was executed by the trustee in his capacity as such when the intent to exercise the power can be inferred from the circumstances surrounding the transaction. Also, the execution of a deed which would otherwise be ineffective is sufficient evidence to indicate such an intent. [*Jerome v Great American Ins Co*, 52 NC App 573, 579; 279 SE2d 42 (1981), citing *Tocci, supra*.]

This rule provides certainty, prevents collusion, and generally makes sense. See also *Kirkman v Wadsworth*, 137 NC 453; 49 SE 962, 964 (1905) (“Where a person conveys land, for a valuable consideration, in fee, he engages with the grantee to make the deed as effectual as he has the power to make it.”). The Trust owned the real property in the case at bar, so Jerry Balan had the authority to sell it, or even give it away, to Pernick.

Plaintiffs rely on *Chappus v Lucke*, 246 Mich 272, 275-276; 224 NW 432 (1929), in which our Supreme Court held that the purchasers of trust property from trustees under a contract executed by them prior to their qualification as trustees were not entitled to specific performance because the contract was void. However, *Chappus* is distinguishable, because in

this case Balan had the authority to distribute the property at the time of the sale. Pernick correctly understood that Balan had authority to dispose of the property and she was merely deceived regarding the source of his authority. Because Balan had the power to distribute the property, the trial court correctly determined that the equities militate against disturbing Pernick's purchase, occupancy, and ownership of the subject property.

Affirmed.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis